Stay out of Trouble...

Ted Whitmer, MAI CCIM Attorney

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I hope the following keeps you out of trouble. Please email me with suggestions of common or serious problems that happen in practice but are not included in the following. I hope to add to the list over time. My email address is ted@tedwhitmer.com

BEWARE OF NON-STANDARD PROPERTIES
I’ve notices after many board enforcement cases that the properties are typically non-standard (“cookie cutter”) properties. This is probably due to three reasons. (1) The property is just harder to appraise and subject to a greater amount of error. (2) Problems associated with these types of properties and appraisals are more likely to surface because there is a greater chance of review and due diligence. (3) Those who commit mortgage fraud probably will chose non-standard properties so the fraud is not so easily detected. The moral of this brief story is “Beware of non-standard properties.”

COMMON BUT EASILY AVOIDED PROBLEMS
The following are frequent Uniform Standards of Professional Appraisal Practice (USPAP) problems. The violations of USPAP discussed following are often considered minor, but are quoted when other problems exist. Furthermore, this first class of problems is easily avoided.

- USPAP requires an appraiser keep a “true” copy of an appraisal. This can be digital and doesn’t have to be a paper copy. However, the report must be signed to be a “true” copy. A great many appraisers turn in unsigned copies to the State Appraisal Agency during investigations and for experience reviews. As one officer told me; “They should at least sign the report before it’s given to the Board.”
- Standard 2-2(b) requires that there be a statement that summarizes the highest & best use of a property. There is NOT an exception because it is a house appraisal or because the form doesn’t have a line or box for it. You should summarize the highest and best use with the following considerations
  1. Exact zoning
  2. If the improvements conform to private & public restrictions
  3. Etc.
- If you claim to have data “in your files” or someone told you something, then you better be able to back it up. Don’t use canned statements such as “after discussions with those in the marketplace” or “market evidence supports the following”, etc.
- Failure to support a lot value in a residential appraisal. MOST clients fail to support the lot value. You need to at least reference the tax value and it would certainly be to your advantage to do a periodic lot study by house value and reference the study. If the lot value is a significant part of the value, then you need to actually appraise the lot, collecting and analyzing comparables. This seems to be necessary in many of the following appraisals. [This is in the common but not as serious mistake because the appraiser generally does not rely on the cost approach. If it is an appraisal where the appraiser puts major emphasis on the approach, then it would be considered serious. The same goes for the next bullet point related to costs.]
  1. Waterfronts or views
  2. Other scenic views
  3. Large lots
4. With significantly older homes that contribute little value to the site
5. Transitioning areas to commercial
6. Areas with significant demolition & rebuilding
7. Excess land that is salable

- Failure to support costs in the cost approach. Related to this is not spending time to apply appropriate adjustments and multipliers to the base cost.
- The wrong distance of the comparable to the subject on the second page of the URAR form.
- Having a report with vestiges of a prior appraisal that were not changed. This occurs because it is common practice for appraisers to use a prior appraisal of either the subject or a property in the same area to prepare a subsequent report.
- Having wrong photos of the subject or comparables.
- Wrong census, flood map, tax or other references. This is often because it was not changed from a previous report.

THE FOLLOWING ARE MORE SERIOUS MISTAKES

- Accepting comparables from owners or others affiliated with the transaction or property. The appraiser I represent often has “builder sales” that were not in MLS and turned out to be falsified in some manner.
- Using older sales because of a time constraint. You must research current sales in the market.
- Using nonconforming sales when conforming sales are available. This status could be because of...
  1. Date of sale too distant from appraisal date
  2. Sales too far away
  3. Too many adjustments need to be applied to the sale
- Failure to analyze and properly report the prior transaction history of the subject. This is a recurring theme for those losing their certifications and license.
  1. SR 1-5 requires the appraiser to analyze any current agreement of sale, option, or listing if available in the normal course of business. Many clients have appraised a property that was listed and offered on MLS in the open market for a significantly lower price than the appraised value. There was no discussion or analysis why. Although the USPAP rule requires the analysis of “current” listings, etc. the appraiser would do well to know all past listing history of the subject and discuss the list prices (there may be many if the listing prices are changed) and discuss why the appraisal is different from the previous or current listing prices.
  2. SR 1-5(b) requires a three year history of the subject. The appraiser often fails to look the history up or fails to properly discuss the history. The requirement is not merely to report the history but is to show the analysis of the past history in the reporting. Although there is no requirement by USPAP to analyze or report if the subject has not sold, the appraiser should make an affirmative statement that the property has not sold if it has not within the USPAP required time of three years. It would be safer, although not required to go back as far as you can with the history of the subject including listings, offers, sales, renovations, demolitions, etc.
- Failure to properly analyze or verify the sales data.
- Failure to properly establish the size of the subject.
- Claiming in the Certification to inspect the subject, but not physically inspecting the subject.
- Improperly supervising trainees.
- Improperly applying an income approach to rental properties.
  1. Not supporting the GRM
2. Not supporting the rents
3. Not supporting expenses
4. Not supporting vacancy

- Not maintaining a proper workfile as required by USPAP. The rule requires the appraiser to preserve evidence of all applicable data and statements required by USPAP and “other information as may be required to support the appraiser’s opinions, conclusions and recommendations.” This requirement is not defined in USPAP and is interpreted in many ways by various enforcement officers and Boards.

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**Record Keeping Rule in USPAP**

An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:

- the name of the client and the identity, by name or type, of any other intended users;
- true copies of any written reports, documented on any type of media;
- summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser’s signed and dated certification; and
- all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.

An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

**Comment:** A workfile preserves evidence of the appraiser’s consideration of all applicable data and statements required by USPAP and other information as may be required to support the appraiser’s opinions, conclusions, and recommendations.

A photocopy or an electronic copy of the entire actual written appraisal, appraisal review, or appraisal consulting report sent or delivered to a client satisfies the requirement of a true copy. As an example, a photocopy or electronic copy of the Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report actually issued by an appraiser for a real property appraisal assignment satisfies the true copy requirement for that assignment.

Care should be exercised in the selection of the form, style, and type of medium for written records, which may be handwritten and informal, to ensure that they are retrievable by the appraiser throughout the prescribed record retention period.

A workfile must be in existence prior to and contemporaneous with the issuance of a written or oral report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report.

A workfile must be made available by the appraiser when required by state enforcement agencies or due process of law. In addition, a workfile in support of a Restricted Use Appraisal Report must be sufficient for the appraiser to produce a Summary Appraisal Report (for assignments under STANDARDS 2 and 3) or an Appraisal Report (for assignments under STANDARD 10), and must be available for inspection by the client in accordance with the Comment to Standards Rules 2-2(c)(viii), 8-2(c)(viii), and 10-2(b)(ix).

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- Not having the necessary geographical competence to perform an appraisal in an area the appraiser generally does not work.
- Not accounting for builder concessions. It doesn’t matter that an area may have as “typical” concessions builders who pay 10 points to close a deal. You must account for the concessions. The sale price in the above case includes both the price of the real estate and the points paid to cause the sale.
- Appraising to the top end of a reasonable range to accommodate. After time has gone by and more data surfaces, it might look like fraud even though not intended.
- Not controlling a digital signature. **(See signature policy from this website).**

**IF YOU RECEIVE A COMPLAINT, ARE SUED, SERVED OR CONTACTED BY AN INVESTIGATOR...**

If you receive notice that you have a complaint with the state board, are going to be sued, or are contacted by investigators concerning an appraisal, immediately do the following. Contact you insurance company. Let them know what is going on or you might lose coverage. Contact an attorney. Although the insurance company will provide a lawyer if the act is covered, you need an attorney to look out for
your interests. Pull your file and look at your supporting data, field notes, etc. to try to recall and retrace what you did. It is likely the appraisal and subsequent report was some time prior to contact.

I would not advise representing yourself. Many make the mistake of not understanding the severity of the problem. Get counsel. I appraise. If I had to defend an appraisal to the state board, I would bring counsel.

**Prevention**

1. Create hard and fast company procedures.
2. Use checklists and formats to ensure no violations.
3. Properly train and supervise or don’t hire.
4. Select the right clients.
5. Beware of non-standard properties.
6. Look at exclusions in insurance policies. High risk assignments are exclusions in the policy.
7. Know and keep up with USPAP.
8. Get quality and not easy education.
9. Read appraisal journals and articles.
10. Keep up with market and economic data and indicators.
11. Have appraisers as friends you can consult with concerning tough problems.